

### **REMARKS**

Reconsideration of the present application is respectfully requested. Claim 30 has been amended. Claim 33 has been canceled, while claims 37 – 39 have been added. Claims 30 – 32 and 37 – 39 are currently pending.

#### **Rejections based on 35 U.S.C. § 112**

Claims 30 – 33 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Office Action states, “It is unclear what the applicant means by ‘the second schedule being generated as a function of the first schedule to cause a predetermined probability of failure.’”

Applicants have amended independent claim 30 in response to this rejection. Claim 30, as amended, now recites “the second schedule being generated by varying the first schedule so as to intentionally cause a predetermined probability of failure in the receiving of said data.” Applicants submit that claim 30 now distinctly claims the subject matter regarded as the invention. Further, this subject matter is disclosed in and enabled by the specification of the present application. *See, e.g.*, Paras. 55 and 56 (explaining the benefits of intentionally causing a predetermined probability of failure). Thus, Applicants respectfully request the rejections under 35 U.S.C. §112, second paragraph, be withdrawn.

#### **Rejections based on 35 U.S.C. § 103**

Claims 30 – 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tam, U.S. Patent No. 6,622,172 (“Tam”). Independent claim 30 has been amended and now recites “the second schedule being generated by varying the first schedule so as to intentionally cause a predetermined probability of failure in the receiving of said data.” Applicants

respectfully submit that Tam does not teach or suggest this element of amended, independent claim 30.

Tam discloses a system for data communications over an asymmetric network connection. Abstract. The system of Tam addresses the problem of network congestion by dynamically delaying the transmission of acknowledgement packets sent by a receiver's computer. Col. 8, ll. 62 – 65. This dynamic delaying is enabled by the receiver's computer estimating the round trip time, *i.e.*, the time taken for a packet of data to be sent from the receiver's computer to the sender's computer, and back to the receiver's computer. Col. 10, ll. 1 - 17. Based on the estimated round trip time, the receiver's computer counts the number of data packets received within a period defined by the estimated round trip time, and this count provides an indication of the network congestion. *Id.* If there is little congestion, the receiver's computer may transmit an acknowledgement for every data packet received from the sender's computer. Col. 10, ll. 21 – 30. On the other hand, if there is a larger amount of network congestion, the receiver's computer transmits acknowledgements sparingly. *Id.* By monitoring network congestion, the system of Tam can appropriately control the transmission of acknowledgement packets so as “to adapt to the congestion situation in the asymmetric connection.” Col. 10, ll. 42 – 44.

Tam, however, does not teach intentionally *causing* a predetermined probability that a packet will fail to reach its intended recipient. Despite delaying the sending of certain acknowledgement packets, the system of Tam does not take any action to prevent the receipt of acknowledgements or any other data packets. For example, Tam does not vary or alter a packet-sending schedule to control the probability of a failure in the data communication. In fact, because Tam is concerned with the reliability of the transport protocol, Tam teaches away from

intentionally causing a predetermined probability of failure in data communications. Therefore, Tam does not teach or suggest “the second schedule being generated by varying the first schedule so as to intentionally cause a predetermined probability of failure in the receiving of said data,” as required by amended claim 30.

As Tam does not teach or suggest each and every element recited by independent claim 30, Applicants respectfully submit that independent claim 30 is in condition for allowance. Applicants further submit that claims 31 - 33, which depend from claim 30, are in condition for allowance for at least the same reasons discussed above with respect to claim 30. Likewise, Applicants respectfully submit that new independent claim 37, along with its dependent claims 38 – 39, are also patentable over Tam for at least the same reasons discussed above with respect to claim 30.

**Conclusion**

For the reasons stated above, claims 30 – 32 and 37 - 39 are in condition for allowance. If any issues remain which would prevent issuance of this application, the Examiner is urged to contact the undersigned prior to issuing a subsequent action. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,

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